



Office of the State Public Defender

Racial Justice For All Implementation Funding

24-month grant funding for legal services

Background of funding

In 2021, a new California law called the “Racial Justice Act” (RJA) went into effect. The law is codified at Penal Code 745(a) and states, “The state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin.” Notably, the RJA does not apply to cases in which sentencing occurred prior to January 1, 2021.

By September 2022, this limitation was addressed. The RJA was amended in AB 256, known as the “Racial Justice for All Act.” AB 256 permits individuals who were sentenced for criminal convictions or juvenile adjudications prior to January 1, 2021, to seek relief for violations of the RJA. The amendments are to be implemented in phases between January 1, 2023 and January 1, 2026, as codified in PC 745(j).

The 2023-2024 Budget Act (SB 102) allocated local assistance funds to the Office of the State Public Defender to aid in the implementation of the Racial Justice for All Act. Funds may be “used for attorney’s fees and salaries, experts, investigators, paralegals, or other ancillary needs” for representation in non-capital cases under 1473(f).¹

California Penal Code 1473(f) is a mechanism for applying the Racial Justice Act retroactively and states, in part “Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (k) of Section 745.”

The Office of the State Public Defender is allocating \$1,950,000 of the budget item to a grant program to provide local assistance for the implementation of the Racial Justice for All Act. Any funded activity must be pursuant to Penal Code 1473(f) and in compliance with the language provided in SB 102.² The allocated funding will cover a 24-month service period.

¹ The specific budget language is: Funds “shall be used to provide representation in non-capital cases, regarding potential or actual claims pursuant to subdivision (f) of Section 1473 of the Penal Code. Funds may be used for attorney’s fees and salaries, experts, investigators, paralegals, or other ancillary needs. These funds shall supplement and shall not supplant existing funding. The funds in this item shall be available for encumbrance or expenditure until June 30, 2026.”

² Note that SB 102 does not include work under 1473.7 as allowable activities for this budget item.

Eligibility to Apply

Applicants are restricted to:

- **Nonprofits:** Nonprofits must be located in the State of California and have been determined by the IRS to have 501(c)(3) status. In addition, any entity applying as a nonprofit must have provided legal services to incarcerated individuals in California for at least three years.
- **Public Defender Offices and Indigent Defense Systems:** Applications must be submitted either by the Board of Supervisors or the Chief County Administrative Officer, unless the Board of Supervisors or County Administrative Officer delegates the Public Defender's Office as the applicant entity.
- **Law school clinics/centers:** Law schools must be in California and have the capacity to represent incarcerated individuals.

Grant Parameters

- **Funding limit:** Proposal amounts are capped at a maximum of \$375,000. Indirect costs shall not exceed 10% of the overall budget proposal request.
- **Grant Period:** Grantee must be prepared to commence work by January 1, 2024 and utilize all funds in accordance with the grant agreement within the 24 month grant period.³
- **Usage Constraints:** Awarded funds are strictly for work authorized by SB 102.⁴ Note that this funding only permits work on RJA claims brought through writs of habeas corpus using Penal Code 1473(f) as the vehicle.
 - Funding may cover research and writing staff to develop claims across multiple cases, staff time to conduct intake and identify claims, attorney or other staff time for representing clients in RJA claims through habeas proceedings, data collection directly associated with RJA representation, expert needs, software and equipment required for RJA claims, trainings in areas related to 1473(f), and other similar or related work.
 - Funding cannot be used for client needs such as gift cards, food, or other direct-to-client funding. Grantees must track spending to demonstrate it meets the allowable purpose.

³ Dates in this RFA are good faith estimates but the parties will be bound by the dates in the grant agreements.

⁴ "... representation in non-capital cases, regarding potential or actual claims pursuant to subdivision (f) of Section 1473 of the Penal Code. Funds may be used for attorney's fees and salaries, experts, investigators, paralegals, or other ancillary needs."

- **Data Reporting:** Grantees are required to collect data about grant funded activity and to report this data to OSPD biannually. In addition, grantees must participate in biannual virtual meetings with OSPD and other grantees.
- **Collaborative Proposals:** OSPD will consider proposals involving multiple entities working collaboratively, but one entity must be designated to serve as the applicant.
- **Single Proposal:** Eligible applicants may not submit more than one funding proposal for consideration.

Do Not Supplant:

Supplanting is the intentional reduction in the amount of federal, state, or local funds appropriated to an existing program or activity because grant funds have been awarded for the same purposes. Supplanting is strictly prohibited under this grant. The Racial Justice for All Implementation Funding shall be used to support new program activities, or to augment or expand existing program activities, but shall not be used to replace existing funds. It is the responsibility of the grantee to ensure that supplanting does not occur. Grantees are required to maintain clear and detailed financial records to demonstrate that grant funds are used only for allowable costs and activities.

Scoring Criteria

A successful proposal will persuasively describe the applicant's ability to perform the proposed work. This includes, among other factors:

- **Organizational Strength**
 - Proficiency with undertaking habeas work generally and/or claims under Penal Code 1473(f).
 - Experience in litigating Racial Justice Act claims.
 - Significant experience in working with incarcerated clients.
 - Cultural competence to work with diverse client base.
 - Administrative capacity to track and report grant-related requirements.
- **Project Parameters**
 - Methodologies for identifying clients and for screening and evaluating claims.
 - Start up time for project implementation.
 - Processes to ensure project staff will be trained on RJA and stay informed about changes in law.
- **Clear Budget**
 - Explanation how funding will be used over a two-year period and its intended impact on RJA litigation.

Additional consideration will be given to applicants with an actionable plan to:

- Serve areas that are considered attorney deserts or otherwise have low rate of attorneys able to file RJA habeas claims as compared to other counties.
- Create sustained benefits to RJA litigation practices in their office beyond grant period.
- Develop strategies to identify and litigate high-impact claims.

It must be clear how all grant-funded activities will comply with the implementation requirements of Penal Code 1473(f) and the Budget Act of 2023.

Decision-making Rights

The OSPD retains exclusive authority to select the qualified entities who will receive Racial Justice for All Implementation Funding. The OSPD reserves the right to reject any and all applications and/or cancel this RFA. The OSPD reserves the right to consider regional and programmatic needs, and to solicit additional applicants when necessary.

Reporting Requirements

Grantees will be required to report on grant work and financials. Data collection metrics have not yet been established, but efforts will be made to develop metrics that are not overly burdensome yet demonstrate adherence to the funding purpose and impact of funding. Likely areas of data collection will include:

- Biannual spending reports comparing expenditures to the approved budget.
- Quantitative and qualitative data about client representation, case processes, and outcomes.
- Participation in virtual meetings as a cohort twice a year.

Questions

To ensure fairness and transparency, any inquiries concerning the grant application or grant process will only be answered in writing. Questions may be submitted between October 2 and November 27, 2023, at 5pm ET. Written responses will be sent to the requestor and both the question and response will be posted on a biweekly basis at <https://www.ospd.ca.gov/idid/>. Please direct all written inquiries to OSPD.Grant@ospd.ca.gov

Timeline

- RFA published: October 2, 2023
- Proposals due: November 30, 2023, at 5pm Pacific Time.
- Grantees Selected: December 18, 2023
- Contracts Signed: Between January 16 - February 16, 2024⁵
- Services Term Begins: February 20, 2024
- Service Term Ends (services end): February 20, 2026
- Grant Close out (grant reporting complete): April 1, 2026

Application

To be considered for funding, applicants must comply with the requirements described in this RFA. For questions, please contact OSPD.Grant@ospd.ca.gov

- 1) Applications are available at <https://www.ospd.ca.gov/idid/>
- 2) To apply, complete the application and submit all applicable attachments **no later than 5:00 p.m. PST on November 30, 2023** to the email OSPD.Grant@ospd.ca.gov with the subject line: "RJA For All Grant". Incomplete or late applications may not be accepted.
 - o Nonprofits must include proof of their 501(c)(3) status and certify that they have provided legal services to incarcerated people in California for at least three years.
 - o Public Defender Office applications must be submitted by the Board of Supervisors or the Chief County Administrative Officer or have a letter delegating the Public Defender's Office as the applicant entity.
- 3) Applications must be submitted in PDF formatted documents using the provided application form. All documents must be submitted as individual PDFs and appropriately titled accordingly to the content of the document.

⁵ This time frame may be adjusted based on OSPD and grantee needs.